

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MAURICIO ANTIONIO)	
ALVARENGA and GLADYS)	
FUENTES,)	
)	
Petitioners,)	
)	Civil Action No.
v.)	05-11390-JLT
)	
EDUARDO AGUIRRE, JR., Director)	
United States Citizenship and)	
Immigration Service, and)	
MICHAEL CHERTOFF, Secretary,)	
Department of Homeland Security,)	
)	
Respondents.)	

**MEMORANDUM IN RESPONSE TO THE PETITIONERS' REQUEST FOR A
STAY**

Introduction

Respondents submit this memorandum in opposition to the Petitioners' request for an order of this Court staying the removal of Petitioner. As described more fully below, Congress has stripped this Court of jurisdiction to stay the Petitioner's removal.

Petitioner's sole recourse for a stay of removal is to seek an order of the First

Circuit Court of Appeals in conjunction with his appeal of the BIA's decision upholding the order of removal.¹

Facts²

Mauricio Alvarenga ("Alvargenga"), a foreign national of unidentified origin, was convicted of assault and battery by means of a dangerous weapon in the West Roxbury District Court on March 14, 2004. Complaint, p. 2. The police report underlying the offense indicates that Alvarenga assaulted both co-plaintiff, Gloria Furntes ("Fuentes"), and their two year old child. See Conviction and Police Report, attached hereto as Exhibit 2.³ Alvarenga was sentenced to eleven months imprisonment, six months to be served. Id. Alvarenga was subsequently detained by immigration officials and placed into removal proceedings. Id.

Alvarenga had married, Fuentes, a United States citizen, in August of 2003. Id. On September 24, 2004, Alvarenga sought a continuance of his removal proceedings to seek

¹ Indeed, Petitioner has appealed his order of removal to the First Circuit and has requested a stay pending disposition of the appeal. See First Circuit Docket # 05-1933, a copy of which is attached as Exhibit 1.

² For purposes of the motion, all factual allegations are taken as true.

³ Undersigned counsel was faxed a copy of these materials on July 7, 2005, at 10:00 a.m. by the Clerk's Office of the West Roxbury District Court. If their authenticity is disputed by Plaintiffs, the Respondents will supplement this filing as time allows.

approval of an I-130 petition⁴ filed on his behalf by Fuentes. Id., p. 2-3. The Immigration Judge (“IJ”) allowed a continuance until November 11, 2004. Id., p. 3. Fuentes filed the application on November 8, 2004. Id., p. 3. On November 11, 2004, the Petitioner requested a further continuance of his removal proceedings as the Respondents had not yet acted upon the I-130 Petition. Id., p. 3. The IJ denied a continuance, conducted a hearing, and found Alvarenga removable. Id. p. 3. See also, IJ Decision, attached as Exhibit 3.

Alvarenga appealed to the Board of Immigration Appeals (“BIA”). Id., p. 3. On May 23, 2005, the BIA upheld the order of removal, finding, *inter alia*, that the IJ had not abused his discretion in denying the requested continuance. Id., p. 3-4. See also, BIA Decision, attached as Exhibit 4.

Alvarenga filed an appeal of the BIA’s decision in the First Circuit Court of Appeals on June 21, 2005, and has sought a stay of removal pending disposition of that appeal. See Exhibit 1.

Alvarenga filed the instant mandamus action, on or about June 30, 2005, and requested that this Court also enter a stay of his removal.

⁴ An I-130 is the means by which an individual married to a non-citizen may obtain an “immediate relative visa.” Such a visa is a prerequisite to seeking to adjust one’s

ARGUMENT

1. This Court Lacks Jurisdiction

On May 11, 2005, the President signed into law the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 119 Stat. 231 (“RIDA”), which, among other things, amends certain provisions of the Immigration and Nationality Act (“INA”). Significant for purposes of the instant request for a stay of removal, Congress specifically amended the judicial review provisions of the INA to provide that the sole jurisdiction to review the validity and execution of any and all removal orders lies in the United States Circuit Courts of Appeals. Section 106(a)(1)(B) of the RIDA creates a new INA section 242(a)(5), 8 U.S.C. § 1252(a)(5):

(5) EXCLUSIVE MEANS OF REVIEW- Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section *shall be the sole and exclusive means for judicial review of an order of removal* entered or issued under any provision of this Act, except as provided in subsection (e). For purposes of this Act, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms 'judicial review' and 'jurisdiction to review' include habeas corpus review pursuant to section 2241 of title 28, United States Code, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

Id. (emphasis added).

immigration status based upon marriage. See 8 U.S.C. §1255.

Section 106(a) of the RIDA explicitly and unequivocally eliminates mandamus jurisdiction in the district courts to entertain any challenge to “any action taken” or “proceeding brought” to remove an alien. Specifically, Section 106(a)(2) of the RIDA, amends 8 U.S.C. §1252(9) to provide:

CONSOLIDATION OF QUESTIONS FOR JUDICIAL REVIEW-

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this title shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28, United States Code, or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

Id. Section 106(a)(3) of the RIDA further amends 8 U.S.C. § 1252(g) to provide:

EXCLUSIVE JURISDICTION.--Except as provided in this section and *notwithstanding any other provision of law (statutory or nonstatutory) including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title*, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.

Id. (amendments italicized).

These amendments became effective on the date of enactment, May 11, 2005. See Section 106(b) of the RIDA. The instant action filed on or about June 30, 2005, is indisputably subject to its provisions.

The sum and substance of these amendments is to make explicit that no court other than the court of appeals has any subject matter jurisdiction respecting “all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien* from the United States,” and respecting “any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under th[e] [INA].” See INA sections 242(b)(9) and 242(g), codified at 8 U.S.C. §1252(b)(9) and (g), respectively, as amended by the RIDA.

The instant claim, seeking mandamus and an injunction prohibiting the execution of Alvarenga’s order of removal, is clearly outside this Court’s jurisdiction. Congress specifically and unequivocally eliminated mandamus jurisdiction in this Court to hear any claim “arising from any action taken . . . to remove an alien.” See Section 106(a)(2) of the RIDA, amending 8 U.S.C. §1252(9). Even if this Court were to construe the instant claim as one that did not fall within that provision, Congress has also expressly legislated that this Court lacks jurisdiction to enjoin the execution of an order of removal. See Section 106(a)(3) of the RIDA, amending 8 U.S.C. § 1252(g).

As a consequence, the requested stay must be denied.⁵

⁵ It is worthy of note that Alvarenga is not without a remedy, he can, and has, sought a stay of removal from the First Circuit Court of Appeals.

Conclusion

As a consequence of the foregoing, the request for a stay must be denied for lack of subject matter jurisdiction.

Respectfully submitted,
MICHAEL J. SULLIVAN
United States Attorney

/s/ Mark J. Grady
Mark J. Grady, Assistant U.S. Attorney
United States Attorney's Office
John Joseph Moakley Courthouse
One Courthouse Way
Boston, MA 02210
(617) 748-3100

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General Docket

US Court of Appeals for the First Circuit

Court of Appeals Docket #: 05-1933

Filed: 6/21/05

Nsuit: 0 (Criminal or NOT SET)

Alvarenga, et al v. Gonzales

Appeal from: U.S. Immigration & Naturalization Serv.

Lower court information:

District: 0090-1 : A78-634-062

lead: A78-634-062

Date Filed: **/**/**

Date order/judgment: 5/23/05

Date NOA filed: **/**/**

Fee status: paid

Prior cases:

None

Current cases:

None

Panel Assignment:

Docket as of June 24, 2005 8:34 pm

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MAURICIO ANTONIO ALVARENGA
Petitioner

Eduardo Antonio Masferrer
FTS 617-531-0136
617-531-0135
Suite 720
[NTC ret]
Masferrer & Hurowitz
6 Beacon St.
Boston, MA 02108

v.
ALBERTO GONZALES, Attorney
General
Respondent

Michael J. Sullivan
617-748-3100
[NTC gvt]
U.S. Attorney's Office

John Joseph Moakley Courthouse
1 Courthouse Way
Boston, MA 02210

Neil Cashman
FTS 617-565-4921
617-565-3142
[NTC gvt]
Immigration and Naturalization
Service
JFK Federal Building
Government Center
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Boston, MA 02203

Nora Livers, Paralegal
FTS 202.307.0592
202.616.9125
[NTC gvt]
Office of Immigration
Litigation
PO Box 878
Ben Franklin Station
Room 7019N
Washington, DC 20044

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MAURICIO ANTONIO ALVARENGA

Petitioner

v.

ALBERTO GONZALES, Attorney General

Respondent

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6/21/05 AGENCY CASE docketed. Opening forms sent. Petition for Review filed by Petitioner Mauricio Antonio Alvarenga. Certificate of service date 6/16/05. Appearance form due 7/5/05. Certified List Due 8/1/05. [05-1933] (geor)

6/21/05 MOTION For Stay of Removal Pending Resolution of Petition for Review filed by Petitioner Mauricio Antonio Alvarenga. Certificate of service dated 6/16/05. [05-1933] (geor)

6/21/05 MEMORANDUM In Support of Motion For Stay of Removal Pending Resolution of Petition for Review filed by Petitioner Mauricio Antonio Alvarenga. Certificate of service dated 6/16/05. [1006413-1] [05-1933] (geor)

6/21/05 FILING FEE PAID by Petitioner Mauricio Antonio Alvarenga. Receipt No. 013201. Amount: \$250. [05-1933] (geor)

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PACER Service Center			
Transaction Receipt			
07/06/2005 16:12:09			
PACER Login:	us8384	Client Code:	
Description:	dkt report	Case Number:	05-1933
Billable Pages:	4	Cost:	0.32

CRIMINAL DOCKET - OFFENSES			DEFENDANT NAME MAURICIO A FUENTES			DOCKET NUMBER 0306CR003888		
COUNT / OFFENSE 1 A&B WITH DANGEROUS WEAPON c265 §15A(b)						DISPOSITION DATE AND JUDGE <i>1-9-04 Bufo</i>		
FINE/ASSESSMENT	SURFINE	COSTS	OUI STATE FEE	OUI VICTIMS ASMT	HEAD INJURY FEE	RESTITUTION	V/W ASSESSMENT	OTHER <i>50</i> <input type="checkbox"/> WAIVED
DISPOSITION METHOD			SENTENCE OR OTHER DISPOSITION <input checked="" type="checkbox"/> Guilty Plea or Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)					
FINDING			FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated; defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)					
COUNT / OFFENSE						DISPOSITION DATE AND JUDGE		
FINE/ASSESSMENT	SURFINE	COSTS	OUI STATE FEE	OUI VICTIMS ASMT	HEAD INJURY FEE	RESTITUTION	V/W ASSESSMENT	OTHER <input type="checkbox"/> WAIVED
DISPOSITION METHOD			SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:					
FINDING			FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated; defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)					
COUNT / OFFENSE						DISPOSITION DATE AND JUDGE		
FINE/ASSESSMENT	SURFINE	COSTS	OUI STATE FEE	OUI VICTIMS ASMT	HEAD INJURY FEE	RESTITUTION	V/W ASSESSMENT	OTHER <input type="checkbox"/> WAIVED
DISPOSITION METHOD			SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:					
FINDING			FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated; defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)					
COUNT / OFFENSE						DISPOSITION DATE AND JUDGE		
FINE/ASSESSMENT	SURFINE	COSTS	OUI STATE FEE	OUI VICTIMS ASMT	HEAD INJURY FEE	RESTITUTION	V/W ASSESSMENT	OTHER <input type="checkbox"/> WAIVED
DISPOSITION METHOD			SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:					
FINDING			FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated; defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)					
COUNT / OFFENSE						DISPOSITION DATE AND JUDGE		
FINE/ASSESSMENT	SURFINE	COSTS	OUI STATE FEE	OUI VICTIMS ASMT	HEAD INJURY FEE	RESTITUTION	V/W ASSESSMENT	OTHER <input type="checkbox"/> WAIVED
DISPOSITION METHOD			SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:					
FINDING			FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated; defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)					

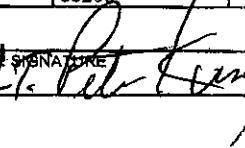
CRIMINAL DOCKET DOCKET ENTRIES		DEFENDANT NAME MAURICIO A FUENTES	DOCKET NUMBER 0306CR003888
DATE	DOCKET ENTRIES		
2/23/04		Order of custody until 2-26-04. Coffey	
2/23/04		Mitt & NAC issued (S)	
2/26/04		Coffey remanded (S)	
2/26/04		Mitt issued (S)	
3/15/04		Coffey, T After hearing & Stip to some violation is found in VOF. G/C intd to H/C for 11MOS, 6mos to serve, bail susp to 3/15/05, Sup Prog, obey CO, complete batterers' prog & Fatherhood program, 40 DAYS jail credit	
3/15/04		Mitt issued (TS)	
5/14/04		Received by Fx. Motion to Revise & Revoke filed by Atty Eduardo Masperrer.	
6/2/04		Motion to Revise & Revoke - Denied J. Coffey atty Masperrer notified by mail (TS)	
12-3-04		Bail Vitter sent (J.H.)	
		DATE 12-10-04	
		\$500 BAIL RECEIVED FROM WEST ROXBURY DISTRICT COURT	
		SIGN. SURETY CK# 11585	
PROVED ABBREVIATIONS			
IR = Arraignment PT = Preliminary hearing CE = Discovery compliance & jury selection T = Bench trial JT = Jury trial PC = Probable cause hearing M = Motion hearing SR = Status review			
SP = Status review of payments FA = First appearance in jury session S = Sentencing CW = Continuance-without-finding scheduled to terminate P = Probation scheduled to terminate			
TA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PR = probation revocation hearing			

CRIMINAL DOCKET		DOCKET NUMBER 0306CR003888	NO. OF COUNTS 1	Trial Court of Massachusetts District Court Department 		
DEFENDANT NAME AND ADDRESS MAURICIO A FUENTES 116 SPRING ST W ROXBURY, MA 02132 0306R0801		DOB 08/26/1982	GENDER MALE	COURT NAME AND ADDRESS WEST ROXBURY DISTRICT COURT 445 ARBORWAY JAMAICA PLAIN, MA 02130-3688 (617)971-1200		
		DATE COMPLAINT ISSUED 12/22/2003		PRECOMPLAINT ARREST DATE 12/21/2003		
FIRST FIVE OFFENSE COUNTS		OFFENSE DESCRIPTION 1 265/15A/A A&B WITH DANGEROUS WEAPON c265 §15A(b)		OFFENSE DATE 12/21/2003		
DEFENSE ATTORNEY Perry		OFFENSE CITY/TOWN ROSLINDALE		POLICE DEPARTMENT BOSTON P.D. - AREA E-		
DATE & JUDGE Rufo 12-22-03		DOCKET ENTRY <input checked="" type="checkbox"/> Attorney appointed (SJC R. 3:10) <input type="checkbox"/> Atty denied & Deft. Advised per 211 D §2A <input type="checkbox"/> Waiver of Counsel found after colloquy		DATE & JUDGE Rufo 12-22-03	FEES IMPOSED Legal Counsel Fee (211D § 2A12) \$ 150/CS <input type="checkbox"/> WAIVED Legal Counsel Contribution (211D § 2) \$ <input type="checkbox"/> WAIVED	
Rufo 12-22-03		Terms of release set: <input type="checkbox"/> PR <input checked="" type="checkbox"/> Bail 5000 <input type="checkbox"/> See Docket for special conditions <input type="checkbox"/> Held (276 §58A) <i>abide by</i>			Default Warrant Assessment Fee (276 § 30 ¶2) \$ <input type="checkbox"/> WAIVED Default Warrant Removal Fee (276 § 30 ¶1) \$ <input type="checkbox"/> WAIVED	
Rufo 12-22-03		Arraigned and advised: <input checked="" type="checkbox"/> Potential of bail revocation (276 §58) <input checked="" type="checkbox"/> Right to bail to review (276 §58) <input type="checkbox"/> Right to drug exam (111E § 10)		1/6/04 Rufo	Probation Supervision Fee (276 § 37A) \$ 63/mo <input type="checkbox"/> WAIVED Bail Order Forfeited	
		Advised of right to jury trial <input type="checkbox"/> Waiver of jury found after colloquy <input type="checkbox"/> Does not waive				
		Advised of trial rights as pro se (Dist. Ct. Supp.R.4)				
		Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 28)				
SCHEDULING HISTORY						
NO.	SCHEDULED DATE	EVENT	RESULT		JUDGE	TAPE START/STOP
1	12/22/2003	ARR	<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd	<i>Mitt v. MAC issued 75</i>	
2	1-9-04	PTH	<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd		
3	7-8-05	Prob	<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd		
4	2-26-04	Prob	<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd		
5	3-15-04	WAR	<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd		
6	9-15-05	Prob	<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd		
7			<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd		
8			<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd		
9			<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd		
10			<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd		
APPROVED ABBREVIATIONS						
ARR = Arraignment PT= Pretrial hearing CE = Discovery compliance & jury selection T = Bench trial JT = Jury trial PC = Probable cause hearing M = Motion hearing SR= Status review						
SRP = Status review of payments FA = First appearance in jury session S = Sentencing CW = Continuance-without-finding scheduled to terminate P = Probation scheduled to terminate						
DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PV = probation violation hearing						
A TRUE COPY ATTEST: X	CLERK-MAGISTRATE / ASST CLERK				TOTAL NO. OF PAGES	ON (DATE)

BOSTON POLICE
INCIDENT REPORTORIGINAL SUPPLEMENTARY

KEY SITUATIONS DOMESTIC VIOLENCE			COMPLAINT NO. 050685506	REPORT DIST. E5	CLEARANCE DIST.		
TYPE OF INCIDENT 209A, ABDW	CRIME CODE 0	STATUS	DATE OF OCCUR. A.12/21/03				
LOCATION OF INCIDENT 116 SPRING ST	APT. A9	DISPATCH TIME 12:31 PM	TIME OF OCCUR. A.12:20 PM				
VICTIM-COMP. (LAST, FIRST, MI) FUENTES, ARMANIA	PHONE (617)-327-8850	SEX MALE	RACE WHITE HISPANIC	MARITAL STATUS UNMARRIED			
ADDRESS 116 SPRING ST, W ROXBURY, MA, 02132-0000	APT. 9A	OCCUPATION	AGE 2	D.O.B. 3/31/2001			
VICTIM-COMP. (LAST, FIRST, MI) FUENTES, GLADYS	PHONE (617)-327-8850	SEX FEMALE	RACE WHITE HISPANIC	MARITAL STATUS MARRIED			
ADDRESS 116 SPRING ST, W ROXBURY, MA, 02132-0000	APT. 9A	OCCUPATION	AGE 20	D.O.B. 8/4/1983			
PERSON REPORTING FUENTES, GLADYS	ADDRESS 116 SPRING ST, W ROXBURY, MA, 02132-0000	APT. 9A	PHONE (617)-327-8850				
WAS THERE A WITNESS TO THE CRIME?							
PERSON INTERVIEWED	AGE	LOCATION OF INTERVIEW	APT.	HOME ADDRESS	APT.	TELEPHONE	A <input checked="" type="checkbox"/> <input type="checkbox"/> RES <input type="checkbox"/> <input checked="" type="checkbox"/> NO BUS
NUMBER OF PERPETRATORS : 1 -- CAN SUSPECT BE IDENTIFIED AT THIS TIME						B <input checked="" type="checkbox"/> <input type="checkbox"/>	
PERSONS	STATUS ARRESTED	NAME (LAST, FIRST, MI) FUENTES, MAURICIO ANTONIO	S.S. NO. 0313845284	BOOKING NO. 20030026305	PHOTO NO.	ALIAS	<input checked="" type="checkbox"/> <input type="checkbox"/> YES NO
	WARRANT NO.	ADDRESS 116 SPRING ST, W ROXBURY, MA, 02132-0000	SEX MALE	RACE WHITE HISPANIC	AGE 21	HEIGHT/DOB 5-06 8/26/1982	
	SPECIAL CHARACTERISTICS (INCLUDING CLOTHING)			WEIGHT 200	BUILD STOCKY	HAIR BLACK	EYES BROWN
CAN SUSPECT VEHICLE BE DESCRIBED						C <input checked="" type="checkbox"/> <input type="checkbox"/> YES NO	
VEHICLES	STATUS	REG. STATE	REG. NO.	PLATE TYPE	YEAR(EXP.)	MODEL	
	VEHICLE MAKE YEAR	VEHICLE NO.		STYLE		COLOR(TOP-BOTTOM)	
	OPERATOR'S NAME			LICENSE NO.	STATE	OPERATOR'S ADDRESS	
	OWNER'S NAME			OWNER'S ADDRESS			
CAN PROPERTY BE IDENTIFIED						D <input checked="" type="checkbox"/> <input type="checkbox"/> YES NO	
PROPERTY	STATUS	TYPE OF PROPERTY	SERIAL OR J-DENTI-GUARD NO.	BRAND NAME-DESCRIPTION	MODEL	VALUE	UCR <input checked="" type="checkbox"/> <input type="checkbox"/> YES NO
IS THERE A SIGNIFICANT MO.						E <input checked="" type="checkbox"/> <input type="checkbox"/> YES NO	
MO	TYPE OF WEAPON-TOOL CELL PHONE	NEIGHBORHOOD RESIDENCE/HOME	TYPE OF BUILDING RESIDENTIAL APT	PLACE OF ENTRY N/A			
	WEATHER CLEAR	LIGHTING NATURAL	TRANSPORTATION OF SUSPECT	VICTIM'S ACTIVITY AT HOME GETTING READY TO GO TO THE MALL			
	UNUSUAL ACTIONS AND STATEMENTS OF PERPETRATOR			RELATIONSHIP TO VICTIM FATHER OF CHILD			
IS THERE ANY PHYSICAL EVIDENCE (DESCRIPTION AND DISPOSITION IN NARRATIVE)						F <input checked="" type="checkbox"/> <input type="checkbox"/> YES NO	
IS THERE ANY OTHER REASON FOR INVESTIGATION (REASON BELOW)						G <input checked="" type="checkbox"/> <input type="checkbox"/> YES NO	
BLOCK NARRATIVE AND ADDITIONAL INFORMATION							
NO	ABOUT 12:31PM ON 12/21/2003, OFFICERS WOZNIAK AND WHITE IN THE E101D, RECEIVED A RADIO CALL FOR DOMESTIC VIOLENCE, LOCATED AT 116 SPRING ST, APT #9A, W ROXBURY. UPON ARRIVAL, OFFICERS SPOKE TO ONE OF THE VICTIMS, GLADYS FUENTES, WHO STATED TO OFFICERS THAT THE SUSPECT, HER HUSBAND, MAURICIO FUENTES, HIT THEIR 2 YEAR OLD CHILD, ARMANIA FUENTES, WITH AN OPEN HAND ON THE CHILD'S LEFT SIDE OF THE FACE WHILE THE CHILD WAS PLAYING. MRS. FUENTES ALSO STATED THAT THE SUSPECT BECAME UPSET WHEN SHE SAID SHE WANTED TO GO TO THE MALL, AT WHICH TIME THE SUSPECT THREW A CELL PHONE AT HER AND STRUCK THE CHILD IN THE FACE WHILE THE CHILD WAS ON HER LAP. OFFICERS NOTICED A SMALL SCRATCH AND SWELLING ON THE BRIDGE OF THE CHILD'S NOSE. MRS. FUENTES ALSO STATED THAT THE SUSPECT THEN THREW THE CELL PHONE A SECOND TIME, THIS TIME STRIKING MRS. FUENTES IN THE RIGHT LEG. EMT'S WERE CALLED TO THE SCENE (AMB# A-5, TYNES/FLANAGAN) TO CHECK ON THE CHILD. THE CHILD REMAINED WITH HIS MOTHER AND FURTHER MEDICAL ATTENTION WAS NOT REQUIRED. THE SUSPECT WAS PLACED UNDER ARREST AND TRANSPORTED TO E-5 FOR BOOKING. THE VICTIM WAS MADE AWARE OF HER 209A RIGHTS AND ADVISED TO SEEK A RESTRAINING ORDER AT W. ROXBURY DISTRICT COURT IF SHE FEELS THE NEED. THE E411D (SULLIVAN), E412D					<input checked="" type="checkbox"/> <input type="checkbox"/> YES NO	

<u>(FLAHERTY) AND THE E414D (MCCARTHY) WERE ALSO ON SCENE FOR ASSISTANCE.</u>				
UNIT ASSIGNED E101D	TOUR OF DUTY 2	REPORTING OFFICER'S NAME CRAIG A WOZNIAK	REPORTING OFFICER'S SIGNATURE 	REPORTING OFFICER'S ID 86206
DATE OF REPORT 12/21/03	SPECIAL UNITS NOTIFIED (REPORTING)			TELETYPE NO.
TIME COMPLETED 02:39 PM	PATROL SUPERVISOR NAME	PAT. SUP. ID	DUTY SUP. NAME PETER K. KING	DUTY. SUP. ID 7344



U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Boston, Massachusetts

File A 78 634 062

November 10, 2004

In the Matter of

MAURICIO ANTONIO ALVARENGA,) IN REMOVAL PROCEEDINGS
)
Respondent)

CHARGE: Section 237(a)(2)(e)(i) of the Immigration Nationality
Act, Domestic Violence Conviction

APPLICATION: Adjustment of Status

ON BEHALF OF RESPONDENT:

Eduardo Massford, Esquire

ON BEHALF OF DHS:

William Richards, Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

Respondent is a native citizen of El Salvador. The respondent through counsel admitted allegations for in the Notice to Appear and denied the record of conviction and denied as well removability. The court upon a careful review of the respondents admissions as well as the police report evidence that group Exhibit 3 of the record of proceedings finds by clear and convincing evidence that the government has sustained the charges

SMR

of removeability and the Court finds by clear and convincing unequivocal evidence that the respondent is removable. The respondent wishes to adjust his status, however, he has not received an approved visa of petition at this point so that really appears to be speculative at this point. The respondent does not appear to have any other forms of relief available to him except perhaps voluntary departure. The court notes that given the respondent's criminal record, the court would not be inclined to grant voluntary departure as a matter of discretion.

Accordingly, the court orders the respondents removal to the country of El Salvador.

ORDERED

IT IS HEREBY ORDERED, that the respondent be removed to the country of El Salvador.

PAUL M. GAGNON
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before
PAUL M. GAGNON in the matter of:

MAURICIO ANTONIO ALVARENGA

A 78 634 062

Boston, Massachusetts

was held as herein appears, and that this is the original
transcript thereof for the file of the Executive Office for
Immigration Review.

Sharon Ricks
Sharon R. Ricks (Transcriber)

Deposition Services, Inc.
6245 Executive Boulevard
Rockville, Maryland 20852
(301) 881-3344

February 11, 2005

**U.S. Department of Justice
Executive Office for Immigration Review**
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A78-634-062 - Boston

Date:

MAY 23 2005

In re: ALVARENGA MAURICIO ANTONIO a.k.a. Mauricio Fuentes

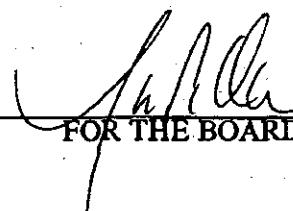
IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Masferrer, Eduardo, Esquire

ORDER:

PER CURIAM. The respondent has appealed from the Immigration Judge's decision dated November 10, 2004. We agree with the Immigration Judge's determination that the respondent is removable as charged (I.J. at 1-2; Exh. 1). Further, notwithstanding the respondent's argument on appeal (Respondent's Br. at 2-4), we find that the Immigration Judge correctly denied the respondent's request for a continuance (Tr. at 41-42). We have held that an Immigration Judge's refusal to continue a hearing until a visa number becomes available was proper because an Immigration Judge may neither terminate nor indefinitely adjourn the proceedings in order to delay an alien's deportation. See Matter of Quintero, 18 I&N Dec. 348, 350 (BIA 1982) (stating that an Immigration Judge's province does not include reviewing the district director's wisdom, but he or she must execute the duty of determining whether deportability is sustained by the evidence). An Immigration Judge also has a duty to determine deportability in an expeditious manner. See *id.*; see also 8 C.F.R. § 1239.2(f) (2004). In addition, although we have previously carved out an exception to the general rule that aliens in proceedings are not accorded continuances for the resolution of a visa petition, the Department of Homeland Security in this matter has expressed its opposition to a continuance (Tr. at 38). See Matter of Velarde-Pacheco, 23 I&N Dec. 253 (BIA 2002). Moreover, notwithstanding that Matter of Velarde-Pacheco, *supra*, was decided in the motion context, the respondent here has made no attempt to abide by the exception carved out therein. Based on the foregoing, we affirm the Immigration Judge's decision finding that the respondent failed to establish *prima facie* eligibility for the relief requested. Accordingly, the appeal is dismissed.



FOR THE BOARD